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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 985**

[Doc. Nos. AMS-FV-10-0094; FV11-985-1A FIR]

**Marketing Order Regulating the Handling of Spearmint Oil  
Produced in the Far West; Revision of the Salable Quantity  
and Allotment Percentage for Class 1 (Scotch) and Class 3  
(Native) Spearmint Oil for the 2011-2012 Marketing Year**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that revised the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year. The interim rule increased the Scotch spearmint oil salable quantity from 693,141 pounds to 733,913 pounds, and the allotment percentage from 34 percent to 36 percent. In addition, the interim rule increased the Native spearmint oil salable quantity from 1,012,949 pounds to 1,266,161 pounds, and the allotment percentage from 44 percent to 55 percent. This change is expected to moderate extreme fluctuations in the supply and

price of spearmint oil and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2011, through May 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide); or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the

"order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of spearmint oil produced in the Far West is regulated by 7 CFR part 985. Under the authority of the order, salable quantities and allotment percentages were established for both Scotch and Native spearmint oil for the 2011-2012 marketing year. However, early in the 2011-2012 marketing year, it became evident to the Committee and the industry that demand for spearmint oil was greater than previously projected and that an intra-seasonal increase in the salable quantity and allotment percentage for each class of oil was warranted. Therefore, this rule continues in effect the action that increased the Scotch spearmint oil salable quantity from 693,141 pounds to 733,913 pounds and allotment percentage from 34 percent to 36 percent. In addition, this rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,012,949 pounds to 1,266,161 pounds and allotment percentage from 44 percent to 55 percent.

In an interim rule published in the **Federal Register** on October 6, 2011, and effective June 1, 2011 through May 31, 2012, (76 FR 61933, Doc. No. AMS-FV-10-0094, FV11-985-1 IR), § 985.230 was amended to reflect the aforementioned increases in the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2011-2012 marketing year.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 32 producers of Scotch spearmint oil and approximately 88 producers of

Native spearmint oil in the regulated production area.

Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 8 of the 32 Scotch spearmint oil producers and 22 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and likely does not result in fewer retail sales of

such products. Without volume control, producers would not be limited in the production and marketing of spearmint oil. Under those conditions, the spearmint oil market would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long term economic damage to the domestic spearmint oil industry. The order's volume control provisions have been successfully implemented in the domestic spearmint oil industry for nearly three decades and provide benefits for producers, handlers, manufacturers, and consumers.

This rule continues in effect the action that increased the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year, which ends on May 31, 2012. The Scotch spearmint oil salable quantity was increased from 693,141 pounds to 733,913 pounds and the allotment percentage from 34 percent to 36 percent. Additionally, the Native spearmint oil salable quantity was

increased from 1,012,949 pounds to 1,266,161 pounds and the allotment percentage from 44 percent to 55 percent.

The Committee reached its recommendation to increase the salable quantity and allotment percentage for both Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet current market demand.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has

not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before December 5, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-10-0094-0003>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule,



without change, as published in the **Federal Register** (76 FR 61933, October 6, 2011) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

Accordingly, the interim rule that amended 7 CFR part 985 and that was published at 76 FR 61933 on October 6, 2011, is adopted as a final rule, without change.

Dated: January 30, 2012

Robert C. Keeney  
Acting Administrator  
Agricultural Marketing Service

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